



Comptroller General
of the United States

143251

Washington, D.C. 20548

Decision

Matter of: AeroThrust Corporation

File: B-251999.3

Date: January 27, 1994

Thomas W. Winland, Esq., Finnegan, Henderson, Farabow, Garrett & Dunner, for the protester.
John E. Toner, Esq., Charles McManus, Esq., and Kathy B. Cowley, Esq., Department of the Navy, for the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In public/private competition, allegation that agency favored public offerors is denied where it is unsupported by the record.
2. Allegation that protester was misled into submitting a proposal by agency's guaranteeing that necessary tool drawings would be available to offerors is denied where agency made no such guarantee.

DECISION

AeroThrust Corporation protests the award of a contract to the Jacksonville Naval Aviation Depot under request for proposals (RFP) No. N00019-92-R-0019, issued by the Naval Air Systems Command. AeroThrust contends that the awardee's proposed prices were unrealistically low; that the awardee, a U.S. government entity, was afforded preferential treatment by the contracting agency; and that the agency demonstrated bad faith by, among other things, misleading AeroThrust into believing that certain critical tool drawings would be available.

We dismiss the protest in part and deny it in part.

The agency issued the RFP on May 27, 1992, to obtain depot maintenance services for the J52 aircraft engine. The RFP permitted both public and private offerors to submit proposals. The procurement includes the fixed-price

provision of maintenance supplies and services, as well as fixed hourly rates for labor services and reimbursement for material and travel costs. Section M of the RFP stated that technical, management, and cost criteria would be of equal importance in evaluating proposals.

An attachment to the RFP listed the engine tooling that would be provided to the contractor as government-furnished tooling. In response to an offeror's question, the agency on July 16, 1992, issued a response, incorporated into an amendment to the RFP, which stated that the government would not provide additional tools. The same amendment also included the following series of questions and answers:

"Question #24: Are tool drawings/aperture cards available? If so, please identify the source.

"Answer: Yes. The Aviation Supply Office (ASO). For specifications and standards, call (215) 697-2179. For technical manuals and publications, call (215) 697-2626.

"Question #25: Can the drawings be purchased or are they available at no cost?

"Answer: If available, there will be a nominal charge.

"Question #26: When will the drawings be made available?

"Answer: They may be requested at any time. If available, turnaround time is usually 30-60 days."

Five proposals were received by the August 13, 1992, due date. Two of those proposals were submitted by U.S. government agencies, and three by other entities, including AeroThrust. According to the protester, it attempted to obtain tool drawings beginning shortly after the August 13 proposal submission date and eventually discovered that the drawings that it needed were not available.

The agency evaluators found that AeroThrust's proposal was marginally acceptable. A substantial number of technical and management weaknesses in the proposal were noted. One of those weaknesses was that AeroThrust appeared to lack the tooling required for performance; the other weaknesses were unrelated to tooling or tool drawings. The evaluators also found that AeroThrust's prices were unrealistically high and unsubstantiated. The agency decided to eliminate

AeroThrust's proposal, as well as one other private entity's proposal, from the competitive range because those two proposals did not have a reasonable chance of being selected for award.

Three offerors' proposals were included in the competitive range, including two submitted by U.S. government agencies. After discussions and the receipt and evaluation of best and final offers from those three offerors, the agency awarded a contract to Jacksonville Naval Aviation Depot on August 24, 1993. AeroThrust received a copy of the award document on August 26; that document disclosed the awardee's line item prices.

AeroThrust contends that the awardee's proposal should have been rejected because it offered many line items at no cost and that other line items were priced below cost. The protester also alleges that the agency showed bad faith and that the competition was not fair because the agency showed favoritism toward the U.S. government offerors. The protester cites as an example of the agency's bad faith and unequal treatment the RFP amendment which allegedly misled AeroThrust into believing that all tool drawings that AeroThrust needed would be available. AeroThrust argues that it would not have incurred the expense of preparing a proposal if it had known that the drawings would not be available.

We dismiss the challenge to the awardee's pricing as untimely. AeroThrust received detailed information about the awardee's prices on August 26, 1993, but did not file this protest challenging the reasonableness of those prices until September 20, 1993. Because the protest was filed more than 10 days after the protester learned of the basis for protest, it is untimely. 4 C.F.R. § 21.2(a)(2) (1993).

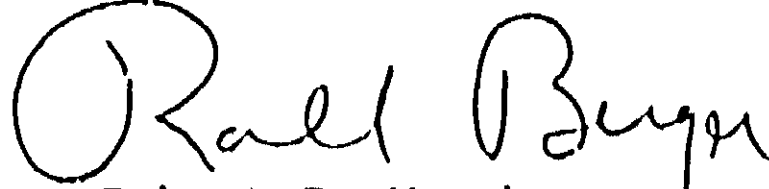
As to the allegation that the agency misled AeroThrust into believing that all necessary tool drawings would be available, the contention lacks a factual basis. The agency did not guarantee the availability of any particular drawing, either in the RFP amendment at issue or otherwise during the course of the competition. While stating that "tool drawings/aperture cards" would be available and providing telephone numbers for inquiries, the amendment repeatedly pointed out that particular drawings could be obtained only "if available." Thus, rather than guaranteeing the availability of the drawings that AeroThrust believed necessary for its purposes, the amendment in effect warned that particular drawings might

not be available. We note that AeroThrust submitted its proposal without making any effort to obtain the drawings during the 4 weeks between issuance of the July 16 amendment and the August 13 deadline for receipt of proposals.

In addition, the agency points out that the availability of tool drawings had little, if any, bearing on the elimination of AeroThrust's proposal from the competitive range. The agency evaluators found that AeroThrust's proposed tool delivery schedule--which the protester contends was based on its assumption that the agency would make available all tool drawings--was inadequate. This concern would thus not have been alleviated even if all requested tool drawings had been available to AeroThrust. The agency's determination that AeroThrust's proposal did not have a reasonable chance of award was therefore not affected by the availability of drawings. Further, the record supports the agency's contention that AeroThrust's proposal was eliminated from the competition range because of concerns about its high cost and a substantial number of technical concerns not at issue in this protest.

With respect to AeroThrust's allegation that the Navy acted in bad faith or displayed favoritism toward public offerors, a protester can establish bad faith on an agency's part only where the record contains convincing proof that the agency acted with the intent to hurt the protester. See Group Techs. Corp.; Electrospace Sys., Inc., B-250699 et al., Feb. 17, 1993, 93-1 CPD ¶ 150. There is nothing in the record of this procurement which suggests that the contracting officials acted in bad faith or displayed bias or favoritism toward the public offerors.

The protest is dismissed in part and denied in part.


 Robert P. Murphy
 Acting General Counsel